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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

HILTON EIDELMAN, as  
Trustee, etc., et al.,  
  
Plaintiffs and Respondents,  
  
v.  
  
STACY STERBCOW,  
  
Defendant and Appellant.

B271811  
  
Los Angeles County  
Super. Ct. No. BP127789

APPEALS from orders of the Superior Court of Los Angeles County, Lesley C. Green, Judge. Affirmed.

Stacy Sterbcow, in pro. per., for Defendant and Appellant.

Musick, Peeler & Garrett, Cheryl A. Orr and Richard S. Conn for Plaintiff and Respondent Hilton Eidelman.

Law Office of Paul H. Samuels and Paul H. Samuels for Objector and Respondent Tracy Sterbcow.

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## INTRODUCTION

Evelyn Goldberg (Evelyn) created a trust designed to provide, after her death, a house for appellant Stacy Sterbcow (Stacy) and Stacy's daughter, respondent Tracy Sterbcow (Tracy), to live in during Stacy's life. Due to certain changes in circumstances following Evelyn's death, Tracy (now an adult) and the trustee, Hilton Eidelman (Hilton or the trustee), agreed to modify the trust. One of the modifications includes the creation of a special needs trust for Stacy's benefit.

Stacy, who is self-represented on appeal, purports to challenge several probate court orders. Most of her arguments, however, are directed to the order of the probate court approving the trustee's petition to modify the trust. She first contends the trust modification order is void because the trustee did not serve her at the correct address with two documents related to the trustee's petition to approve the settlement agreement and modify the trust. We conclude Stacy had the opportunity to fully and fairly litigate the trust modification and that any technical defect in service was not prejudicial. Stacy further argues that even if the order is valid, the court erred in modifying the trust to include a special needs trust for Stacy's benefit, over her objection. We see no error in the probate court's findings. Finally, Stacy asserts the court erred in not finding that the trustee breached his fiduciary duty to her. We conclude Stacy fails to present a colorable issue for our review.

Finding no error, we affirm.

## **FACTS AND PROCEDURAL BACKGROUND**

### **1. The Evelyn Joy Goldberg Trust**

#### **1.1. The Terms of the Trust**

In 1987, Evelyn created a revocable trust (the Family trust) designed, in part, to provide for her grandchildren, including Stacy, following her death. Evelyn amended the trust in 1989 and again in 2001. She died in 2010.

As amended, and as pertinent here, the trust directed the trustee, upon Evelyn's death, to create a separate sub-trust for the benefit of Stacy and Tracy (the Sterbcow sub-trust) and place in that sub-trust \$130,000 and a home owned by Evelyn located on Keswick Street in Reseda, California (the Keswick house). When Evelyn amended the trust, Stacy and Tracy were living in the Keswick house.

The Family trust provided that Stacy and Tracy could reside in the Keswick house or a replacement residence as long as they maintained the residence "in reasonably good order and repair." In addition, the Sterbcow sub-trust was to be maintained at least during Stacy's life and the assets of the trust were to be used only to pay costs relating to the residence and the trustee's fees.

In connection with her second trust amendment, Evelyn also provided a lengthy written statement clarifying her wishes regarding the Sterbcow sub-trust—and Stacy in particular. She provided the statement because, in her words, "we are dealing with a special, emotionally disturbed but needy person here." Evelyn explained that she created the Sterbcow sub-trust to take care of Stacy and Tracy: "In my opinion, my granddaughter, Stacy is mentally disturbed. She has suffered from this

throughout her adult life. She has been unable to work. She has not married. She goes from one crisis to another. She receives public assistance in the form of welfare support, food stamps, and other support from governmental institutions. She exercises poor judgment in financial matters.” After Stacy was evicted from her apartment, Evelyn purchased the Keswick home to provide a place for Stacy and Tracy to live. She stated further: “I want this home or its equivalent to be a place for Stacy throughout her lifetime because I believe she will never be able to provide for herself.” Evelyn therefore provided that the trust should continue until Stacy’s death, and possibly until Tracy’s death, depending on Tracy’s specific circumstances as decided by the objective and family trustees.<sup>1</sup> Evelyn anticipated that \$130,000, earning interest at a rate of 5 percent per year, would be sufficient to pay for all expenses relating to the Keswick home (property tax, insurance, utilities, maintenance) as well as the objective trustee’s fees at least until Stacy died.

Evelyn specified Stacy and Tracy were “equal to one another in regard to their beneficial rights” in the Sterbcow sub-trust: “One has no ascendancy over the other. If the two should separate, or Tracy decides to marry and live separately, then they will negotiate a fair deal between themselves regarding their rights as beneficiaries of the Sterbcow Trust. Regardless of how that works out, the Objective Trustee will keep Keswick or its equivalent free of encumbrances and available for the use of

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<sup>1</sup> Due to Stacy’s reportedly difficult personality, Evelyn provided that the Family trust should be managed by Hilton, but that the Sterbcow sub-trust should be managed “objectively and unemotionally” by an objective trustee.

Stacy and Tracy during Stacy's lifetime or in the event of Stacy's early death, to the time Tracy reaches 40 years of age."

## **1.2. Subsequent Events**

At some point prior to Evelyn's death, Evelyn's son Hilton became the trustee of the Family trust. In 2005, Hilton evicted Stacy and Tracy from the Keswick house and later sold it. The eviction came after the City of Los Angeles advised Hilton that Stacy had been harassing her neighbors in the extreme and demanded that he, as trustee, take action.

Hilton held the proceeds from the sale of the Keswick house, less the costs of sale and repair (which exceeded \$50,000 due to damage and lack of basic maintenance during Stacy's occupancy) in trust, pending a determination of how and when the Sterbcow sub-trust should be funded.

In 2014, Hilton purchased with his own funds a replacement house on Amigo Avenue in Reseda, California (Amigo house). He represents the Amigo house is "comparable to or better than the Keswick property in virtually every respect, and is in 'move-in' condition." Stacy has refused to live in the Amigo house.

## **2. Probate Court Proceedings**

### **2.1. The Initial Petitions**

Approximately one year after Evelyn's death, Hilton filed a petition in probate court seeking instructions regarding the Family trust and the Sterbcow sub-trust.

Stacy subsequently filed her own petition seeking an accounting from the trustee, the appointment of an objective trustee for the Sterbcow sub-trust, and an order to fund the Sterbcow sub-trust. In addition, Stacy asserted several causes of

action against the trustee including, as relevant here, breach of fiduciary duty. The parties vigorously litigated these and many other issues for several years.

## **2.2. The Trustee's Petition to Modify the Trust**

In April 2015, Hilton filed a verified petition seeking an order modifying the provisions of the Family trust relating to the Sterbcow sub-trust due to circumstances not anticipated by Evelyn. Hilton represented that Stacy receives means-tested government benefits due to a “psychiatric/emotional disability,” and explained that she was evicted from the Keswick house after she continually harassed her neighbors and the City of Los Angeles intervened. He observed that “Stacy’s inability to get along with neighbors was a reflection of a personality disorder which renders her unable to engage in normal social intercourse and to maintain lasting stable relationships.” He also questioned whether Stacy would be able to maintain any residence “‘in reasonably good repair,’ ” as required under the Sterbcow sub-trust, and noted that she was refusing to live in the Amigo house “for reasons not justified by the terms of the Sterbcow Trust and is likely to refuse to occupy any suitable replacement property, thus defeating a major purpose of the Sterbcow Trust.” Finally, Hilton explained that due to Stacy’s personality disorder, Tracy (then 29 years old) was “not psychologically capable” of living with Stacy.

Hilton proposed modifications to the trust that would allow Tracy to receive some benefit from the Sterbcow sub-trust while not living with Stacy and, at the same time, preserve Stacy’s eligibility for government benefits by creating a special needs trust for her. In addition, Hilton explained that Evelyn’s assumptions about the \$130,000 cash gift—that it would earn

sufficient income to pay for insurance, upkeep, maintenance, and property taxes, as well as the fees for an objective trustee—were in error and that based on current figures that amount would only last a few years. Hilton therefore proposed, among other changes, that the Sterbcow sub-trust keep its administrative costs down by allowing Tracy to serve as the objective trustee.

Tracy generally agreed with the trustee's proposed modifications. Stacy objected and requested that the court deny the trustee's petition to modify the trust in its entirety.

### **2.3. Trustee's Petition to Approve Settlement and Modify the Trust**

Hilton and Tracy subsequently negotiated a settlement of the petition to modify the trust. Stacy was not a party to the settlement and objected to the settlement's terms.

The trustee filed a verified petition seeking an order confirming the settlement of the petition to modify the trust. As pertinent here, Tracy and Hilton agreed the trust should be amended to provide:

- Tracy would be eligible to serve as the objective trustee of the Sterbcow sub-trust;
- Hilton would transfer the Amigo house to the Sterbcow sub-trust. The Family trust (not the Sterbcow sub-trust) would reimburse him \$330,000, which comprises the purchase price and repairs paid by Hilton;
- Tracy may retain or sell the Amigo house, in her discretion;
- The Family trust would fund the Sterbcow sub-trust with \$130,000 plus interest at 7 percent

from March 27, 2011 (one year after Evelyn's death) to the present;

- Hilton would place an additional \$63,000 in the Sterbcow sub-trust, representing the reasonable net rental income of the Amigo house running from the date of Evelyn's death to the date the Amigo house was purchased;
- Once the Sterbcow sub-trust was funded, Hilton would have the discretion to disburse half of the proceeds to Tracy outright; and
- The Sterbcow sub-trust would be amended to conform with the requirements of a special needs trust.

Stacy, who was representing herself at this point, filed several sets of objections to the proposed trust modifications and multiple supporting declarations by herself and others.

#### **2.4. The Order Modifying the Trust**

The court heard argument on the petition to approve the settlement and granted the petition. The formal order approving the settlement and modifying the trusts was entered on March 25, 2016.

Stacy subsequently filed a motion for reconsideration which the court denied.

### **3. Stacy's Appeals**

Stacy filed her first notice of appeal on April 26, 2016, purporting to appeal from orders entered on March 1, March 25, April 1, and April 21, 2016. To the extent those orders are



appealable, her notice of appeal was timely. (Cal. Rules of Court, rule 8.104.)

Stacy filed a second notice of appeal on June 13, 2016, challenging an order entered on May 9, 2016. That notice of appeal was also timely. (Cal. Rules of Court, rule 8.104.)

We consolidated the two appeals for all purposes.

### **CONTENTIONS**

Stacy contends (1) the trust modification order is void because the trustee did not serve her at the correct address with a copy of his petition to approve the settlement agreement and modify the trust; (2) even if the order is not void, the court erred in modifying the trust to include a special needs trust for Stacy's benefit, over her objection; and (3) the court erred in not finding that the trustee breached his fiduciary duty to Stacy.

### **DISCUSSION**

- 1. Any technical defect in the trustee's service of documents relating to the petition to confirm the settlement and modify the trust was waived by Stacy and, in any event, no prejudice appears.**

Stacy contends the order approving the settlement and modifying the trust is void because the trustee served her with two pleadings relating to that proceeding—the trustee's response to her objections and the trustee's supplement to the petition to confirm the settlement and modify the trust—at the wrong address. We conclude Stacy waived any defect in service by filing multiple pleadings in opposition to the trustee's petition and appearing at the hearing and opposing the petition on the merits.

### **1.1. Additional Facts**

The trustee filed his petition to confirm the settlement and modify the trust on December 21, 2015. The petition was initially served on Stacy's counsel, Vogt, Resnick, Sherak LLP, in Newport Beach. But, as the trustee acknowledges, that service was ineffective because Stacy's counsel had been relieved effective December 7, 2015. At that time, counsel represented that Stacy's last known address was a post office box in Sherman Oaks, California (the Sherman Oaks address). The same day, December 21, 2015, the trustee rectified the mistake and served Stacy with copies of the notice of hearing and the petition to confirm the settlement and modify the trust at her last known address, i.e., the Sherman Oaks address. The hearing on the petition was scheduled for January 19, 2016.

It appears that Stacy filed an objection to the trustee's petition (styled as an ex parte application) in early January 2016. That pleading included several pages of handwritten notes to the court from Stacy, as well as a three-page, single-spaced, typed declaration from Stacy. She also submitted, on January 14, 2016, a declaration from a lawyer with whom she had consulted, who indicated that Stacy received a copy of the settlement agreement on January 4, 2016, and that she also had a copy of the lengthy petition to approve the settlement and modify the trust. In addition, Stacy submitted a declaration from another person who provided additional background information about Stacy and Tracy. Stacy submitted an additional three-page declaration from herself on January 15, 2016.

The matter came for hearing as scheduled on January 19, 2016. The court continued the hearing, however, and gave Stacy until February 22, 2016, to submit any additional objections to

the petition to confirm the settlement and modify the trust. Stacy submitted additional pleadings to the court, including another declaration from Stacy, this one variously typed and handwritten, single-spaced, and six pages in length, and photocopies of 22 pages of handwritten notes contained in a spiral-bound notebook. She also resubmitted the declarations she had previously filed in January 2016.

Meanwhile, the trustee filed a response to Stacy's objections and a supplement to his petition to confirm the settlement and modify the trust. The trustee served Stacy with both documents at the Sherman Oaks address.

Stacy appeared and argued on her own behalf at the continued hearing on March 1, 2016.

## **1.2. Analysis**

Service requirements are set forth in Code of Civil Procedure section 1013. As pertinent here, subdivision (a) provides:

"In case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence."

Stacy identifies two documents she contends were served at an incorrect address: the trustee's response to Stacy's objections and the trustee's supplement to the petition to confirm the settlement and modify the trust, both of which were filed February 26, 2019. The trustee served Stacy with both

documents at the Sherman Oaks address. Stacy argues, however, that as of February 26, 2016, “the office address as last given by [her] on any document filed in the cause and served on [Hilton]” was not the Sherman Oaks address he used for service but was instead the address of the Burbank Temporary Aid Center (Burbank address). The appellate record supports Stacy’s factual contention.

Citing *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215 (*Gorham*), Stacy argues that as a result of the trustee’s failure to serve the two documents identified above on her at the correct address, the court’s subsequent order confirming the settlement and modifying the trust is void. We disagree. The issue in *Gorham* relates to fundamental or personal jurisdiction. There, Gorham appealed from an order denying his motions to set aside a default judgment obtained against him on the ground that he was never served with a summons or a complaint, contrary to the fraudulent representation of the process server. As a result, Gorham argued, all subsequent actions of the court were void. The Court of Appeal agreed, explaining that “[c]ourts generally refer to jurisdiction over the parties and subject matter in any action as ‘fundamental jurisdiction,’ and where this is lacking there is an entire absence of power to hear or determine the case. [Citation.] Under such circumstances, ‘an ensuing judgment is void, and “thus vulnerable to direct or collateral attack *at any time.*” ’ [Citation.]” (*Id.* at p. 1225.)

Here, however, Stacy does not argue the court lacked fundamental jurisdiction over her. *Gorham* is therefore inapposite. Instead, Stacy argues that the defective service of two documents relating to the trustee’s petition to confirm the

settlement and modify the trust effectively deprived the court of jurisdiction to rule on that petition. We reject this argument for two reasons.

First, “[i]t is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of the motion. [Citations.] This rule applies even when no notice was given at all. [Citations.] Accordingly, a party who appears and contests a motion in the court below cannot object on appeal or by seeking extraordinary relief in the appellate court that he had no notice of the motion or that the notice was insufficient or defective.” (*Tate v. Superior Court* (1975) 45 Cal.App.3d 925, 930.) In this proceeding, as noted *ante*, Stacy filed numerous documents in opposition to the trustee’s petition to confirm the settlement and she appeared at the hearing on March 1, 2016, and argued against the trustee’s position. She therefore waived any defect in service.

Second—and equally well settled—in order to obtain a reversal based upon this type of procedural defect, an appellant must demonstrate not only that the notice was defective, but that she was prejudiced. (Cal. Const., art. VI, § 13; *Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1289.) “ ‘Procedural defects which do not affect the substantial rights of the parties do not constitute reversible error. (Code Civ. Proc., § 475.)’ ” (*Reedy*, at p. 1289.) Here, Stacy has made no showing—nor has she argued—that the service defect prejudiced her. As we have said, Stacy had ample opportunity to oppose the trustee’s petition and she did so. “[W]e cannot presume prejudice and will not reverse the judgment in the absence of an affirmative showing there was a miscarriage of justice. [Citations.] Nor will this court act as counsel for appellant

by furnishing a legal argument as to how the trial court's ruling was prejudicial. [Citations.]" (*Century Surety Co. v. Polisso* (2006) 139 Cal.App.4th 922, 963.) Inasmuch as the appellate record shows that Stacy had ample opportunity to litigate the issues presented in the trustee's petition to confirm the settlement and modify the trust, we see no prejudice from the alleged error.

**2. The court's implied finding that Stacy lacks the capacity to manage her affairs is supported by substantial evidence.**

Stacy further contends the court erred in ordering that her portion of the Sterbcow sub-trust be administered as a special needs trust. Specifically, she contends that because she objected to the creation of a special needs trust for her benefit, the court's order violates Probate Code section 3613.<sup>2</sup>

Several statutes are pertinent to our analysis regarding the propriety of a special needs trust in this case. Section 3600 et seq. governs court approval of settlements in pending actions involving a minor or person with a disability. The court here made an order under section 3602, subdivision (a),<sup>3</sup> directing that the proceeds of the settlement be placed in a special needs trust under section 3604. In order to do so, the court first concluded

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<sup>2</sup> All undesignated statutory references are to the Probate Code.

<sup>3</sup> "If there is no guardianship of the estate of the minor or conservatorship of the estate of the person with a disability, the remaining balance of the money and other property, after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601, shall be paid, delivered, deposited, or invested as provided in Article 2 (commencing with Section 3610)." (§ 3602, subd. (a).)

Stacy is a “person with a disability”—a finding Stacy contends is not supported by any evidence in the record.

Section 3603 defines a “ ‘person with a disability,’ ” as follows:

“(a) A person for whom a conservator may be appointed.

“(b) Any of the following persons, subject to the provisions of Section 3613:

“(1) A person who meets the definition of disability as defined in Section 1382c(a)(3) of Title 42 of the United States Code, or as defined in Section 416(i)(1) of Title II of the federal Social Security Act (42 U.S.C. Sec. 401 et seq.) and regulations implementing that act, as set forth in Part 416.905 of Title 20 of the Federal Code of Regulations.

“(2) A person who meets the definition of disability as defined in paragraphs (1), (2), and (3) of subsection (d) of Section 423 of Title II of the federal Social Security Act (42 U.S.C. Sec. 401 et seq.) and regulations implementing that act, as set forth in Part 404.1505 of Title 20 of the Federal Code of Regulations.

“(3) A minor who meets the definition of disability, as set forth in Part 416.906 of Title 20 of the Federal Code of Regulations.

“(4) A person with a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code.”

Substantial evidence supports a finding that Stacy is a person with a disability as set forth in section 3603, subdivision (b). Specifically, and as she conceded below, Stacy has been receiving Supplemental Security Income (SSI) benefits since 1980. “ [T]he Supplemental Security Income Program is a federally funded welfare program administered through the Social Security Administration.’ [Citation.] It was established by

title XVI of the Social Security Act (42 U.S.C. § 1381 et seq.). [Citation.] Thus, unlike Social Security benefits or Social Security disability insurance benefits, which require past contribution by a wage earner, SSI ‘provides benefits to aged, blind, and disabled individuals who have income and resources below certain statutory amounts. [Citation.]’ [Citation.]” (*Elsenheimer v. Elsenheimer* (2004) 124 Cal.App.4th 1532, 1538.)

In order to receive SSI benefits, Stacy must be a person described in 42 U.S.C.A. § 1381a, i.e., an “aged, blind, or disabled individual who is determined under part A to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Commissioner of Social Security.” Under federal law, “disability” means the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months ... .” (42 U.S.C.A. § 416, subd. (i)(1).) The court could reasonably have concluded, therefore, that Stacy meets the definition of “disabled person” under section 3603, subdivision (b)(2).

Stacy contends, in the alternative, that the court could not approve the creation of a special needs trust because she objected to the use of such a trust. As Stacy points out, section 3613 provides, “Notwithstanding any other provision of this chapter, a court may not make an order or give a judgment pursuant to Section 3600, 3601, 3602, 3610, or 3611 with respect to an adult who has the capacity within the meaning of Section 812 to consent to the order and who has no conservator of the estate with authority to make that decision, without the express consent



of that person.” It is undisputed that Stacy objected to the proposed special needs trust in writing and at the March 1, 2016 hearing. The record contains no indication that a conservator has been appointed for Stacy, and the trustee does not argue otherwise.

We therefore consider whether the court’s implied finding that Stacy lacks capacity was proper. Section 810 makes clear that the law generally presumes that a person has the capacity to make decisions, even if that person has a mental or physical disorder. (§ 810, subds. (a), (b).) Further, a determination that a person lacks capacity should be based on evidence that the person has a deficit in mental function that is related to the decision or act contemplated. (§ 810, subd. (c).)

Section 811 provides, in pertinent part, that mental functions include the “[a]bility to plan, organize, and carry out actions in one’s own rational self-interest” and the “ability to reason logically.” (§ 811, subd. (a)(2)(F) & (G).) As to “[t]hought processes,” section 811 provides that “[d]eficits in these functions may be demonstrated by the presence of the following:

(A) Severely disorganized thinking[;] (B) Hallucinations[;] (C) Delusions[;] (D) Uncontrollable, repetitive, or intrusive thoughts.” (§ 811, subd. (a)(3)(A)–(D).) Further, the “[a]bility to modulate mood and affect” may also be considered: “Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual’s circumstances.” (§ 811, subd. (a)(4).)

Section 811 also provides that “[a] deficit in the mental functions ... may be considered only if the deficit, by itself or in

combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question." (§ 811, subd. (b).) And, "[i]n determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment." (§ 811, subd. (c).) Importantly, "[t]he mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act." (§ 811, subd. (d).)

Finally, and as pertinent here, section 812 provides that "a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following: [¶] (a) The rights, duties, and responsibilities created by, or affected by the decision. [¶] (b) The probable consequences for the decisionmaker and, where appropriate, the persons affected by the decision. [¶] (c) The significant risks, benefits, and reasonable alternatives involved in the decision."

The order modifying the trust does not indicate precisely what evidence the court relied upon in making its determination that Stacy lacks the capacity to make a decision as to whether a special needs trust serves her interest. We presume, however, that the court made such a finding. (See, e.g., *Williams v. Russ* (2008) 167 Cal.App.4th 1215, 1224 [appellate court will indulge all presumptions in favor of the trial court's order on matters as to which the record is silent].) And we conclude the court's

implied finding is supported by substantial evidence. (See *Conservatorship of O.B.* (2019) 32 Cal.App.5th 626, 633 [reviewing probate court order establishing a limited conservatorship for substantial evidence].)

Various aspects of the appellate record support a finding that, at a minimum, Stacy lacks the “[a]bility to plan, organize, and carry out actions in [her] own rational self-interest” and the “ability to reason logically.” (§ 811, subd. (a)(2)(F) & (G).) To begin with, Evelyn established the Sterbcow sub-trust because Stacy had been living on the street with her young daughter and Evelyn surmised that, due to her disability, Stacy would never be able to hold a job and provide for herself and her child. Evelyn’s prediction has, thus far, come to fruition. And even when Stacy did agree to live in a house provided by Evelyn, she was unable to maintain the house in a livable condition. And throughout these proceedings, Stacy has refused the benefits—namely, housing—provided by the Sterbcow sub-trust.

Stacy’s conduct during this litigation also provided the probate court significant insight into her mental processes and ability to make decisions in her own interest. Certainly, Stacy’s numerous filings—only a small portion of which are contained in the appellate record—reflect a substantial difficulty in logical reasoning. We also note that the probate court had ample opportunity to observe Stacy in person, particularly during the proceedings in which she represented herself leading up to and including the hearing on the trustee’s petition to confirm the settlement and modify the trust. (See *Conservatorship of O.B.*, *supra*, 32 Cal.App.5th at pp. 634–635 [noting probate court’s observations of person with autism spectrum disorder were relevant to determination regarding her capacity].)

In sum, the court did not err in affirming the settlement and modifying the trust over Stacy's objection.

**3. According to the appellate record, Stacy's claim against the trustee for breach of fiduciary duty is still pending.**

As noted, Stacy filed a petition containing, among other things, a claim against the trustee for breach of fiduciary duty. On appeal, she argues the court "abused its discretion in failing to hold [the trustee] liable for his breach of fiduciary duty to [Stacy]." Indeed, the bulk of Stacy's opening brief focuses on the trustee's actions which she contends were inappropriate—arguments better suited to the probate court in the first instance. But although Stacy asserts the court erred in not holding the trustee accountable for his misdeeds, she fails to identify any particular order or ruling that resolved her claim for breach of fiduciary duty. Instead, Stacy claims "the court in essence dismissed [her] petition." That claim is contradicted by the appellate record.

Specifically, at the March 1, 2016 hearing, the court reviewed with counsel and Stacy all pending matters and clarified their status. With respect to Stacy's petition, the trustee claimed the petition was moot but the court did not agree. Instead, the court continued that matter for a hearing on June 28, 2016. The court advised Stacy that the trust modifications would be in place at that point and said: "And, Ms. Sterbcow, you can tell us if there's still anything remaining on that [i.e., the petition] at that time." The appellate record does not contain a transcript from the June 28 hearing or, indeed, from any proceeding after May 6, 2016.

In sum, although Stacy seeks a reversal of “the judgment” on her breach of fiduciary duty claim, she has not identified any ruling or order by the court that resolved or dismissed that claim. Stacy has therefore failed to present a valid issue for our review.

### **DISPOSITION**

The order granting the petition to confirm the settlement and modify the trust, and any other orders challenged by Stacy Sterbcow, are affirmed. In the interest of justice, no costs are awarded. (Cal. Rules of Court, rule 8.278(a)(5).)

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.